

Service Date: January 8, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF NORTHWESTERN)	UTILITY DIVISION
ENERGY, Petition by LARGE CUSTOMER)	
GROUP, CONSUMER COUNSEL, and)	DOCKET NO. D2003.8.114
ENERGY SHARE, regarding Universal)	
System Benefits, Related Charges, Revenue)	ORDER NO. 6504a
Accounting, and Use of Funds)	

FINAL ORDER

BACKGROUND

1. On August 12, 2003, the Montana Large Customer Group ("LCG"), Energy Share of Montana, Inc. ("Energy Share") and the Montana Consumer Counsel ("MCC"), collectively referred to herein as "Petitioners," requested that the Montana Public Service Commission ("PSC" or "Commission") act to preserve and protect Universal System Benefits ("USB") programs and funds collected for USB programs by NorthWestern Corporation ("NorthWestern") or NorthWestern Energy ("NWE"), a division of NorthWestern.

2. LCG members make substantial payments toward USB programs. NWE has reported that, in 2002, more than \$2,437,000 was collected in electric USB charges from large customers as a class. Large customers are allowed by statute to obtain credits or reimbursement (up to the USB amount they have paid) for qualifying expenditures on energy efficiency or contributions to low-income energy assistance programs. LCG stated that its members have made substantial investments in energy efficiency and significant contributions to Energy Share under the electric USB program. Annual reports are filed with the Montana Department of Revenue ("DOR") documenting these qualifying expenditures. According to LCG, it would be disruptive of energy conservation efforts, as well as low-income energy contributions, if USB funds were diverted or delayed in a bankruptcy filing by NorthWestern or by other actions.

3. Energy Share receives USB funds, by Commission direction and through large customer contributions, which are applied to qualified public purposes. According to the Petitioners, in Fiscal Year 2002, 1,292 low-income families served by NWE received assistance through USB and Energy Share funds. Energy Share has previously requested that the Commission segregate USB accounts held by NWE to ensure any interest earned in those accounts remain with USB funds and do not accrue to NWE. Energy Share stated that it would create a severe hardship on recipients of emergency energy assistance from Energy Share, or other low-income energy assistance programs, if the collection and distribution of USB funds were disrupted by NWE financial difficulties, such as by a possible bankruptcy proceeding. Energy Share believes it is essential to segregate USB accounts both to protect the public interest in the funds and to avoid disruption in vital assistance.

4. MCC urged the Commission to take all necessary steps to track, account for, and preserve USB funds for the benefit of current and prospective consumer beneficiaries of USB programs. This step is in the interest of NWE customers and of the public purposes served by the USB programs

5. Petitioners requested that the Commission promptly act to preserve and protect USB funds collected by NWE from financial contingencies and to ensure the uninterrupted availability of USB funds for the public purposes mandated by the Montana Legislature and supervised by the Commission.

6. In particular, Petitioners requested that the Commission authorize and direct NWE to segregate both electric and natural gas USB funds in specifically identified USB accounts. Such USB funds and accounts should not be commingled with any other NWE or NorthWestern funds or accounts, should bear interest for the benefit of the USB program, and should be clearly identified and treated as public purpose funds and not as NWE property.

7. Petitioners stated this segregation of USB funds should not be construed to the detriment of NWE recovering reasonable costs incurred in its administration of USB collection, credits, reimbursements or forwarding of funds as provided by law and directed by the PSC.

8. On August 22, 2003, the Commission issued and served Order No. 6504, Proposed Order on NorthWestern Energy Electric and Gas Universal System Benefits Programs. The Order provided that it would become effective twenty-one days after August 22, 2003, without further action by the Commission unless any person directly affected filed an objection within twenty days of August 22, 2003. On September 11, 2003, within twenty days of August 22, 2003, NWE filed a Response to Petition to Segregate USB Funds in which it objected to Order 6504.

9. On September 14, 2003, NorthWestern filed a petition for protection under Title 11, United States Code (Bankruptcy) in the United States Bankruptcy Court for the District of Delaware (Cause No. 03-12872). NorthWestern asked the Bankruptcy Court for authorization to continue its public purpose programs as it had prior to filing. NorthWestern acknowledged that the USB funds were not part of the bankruptcy estate. The Commission and the MCC objected to that request because the USB funds would be commingled with NorthWestern's funds and could be at risk. After negotiations between the parties, NorthWestern agreed to establish a separate, special purpose bank account for USB funds. The separate account was opened on November 13, 2003.

10. On November 25, 2003 the Bankruptcy Judge entered an order which stated in pertinent part:

20. The Debtor shall establish an additional deposit account with Wells Fargo on or before November 16, 2003 (as reflected on Exhibit C, the "USB Account") for the Universal System Benefits funds (the "USB Funds"). The Debtor shall deposit all USB Funds that have been received as of the date of the establishment of the account into the USB Account. All subsequent USB Funds collected by the Debtor shall also be deposited in the USB Account as such funds are collected. The Debtor shall authorize and make disbursements from the USB Account at regular intervals as required by the laws of the State of Montana. The USB Funds are collected for the sole benefit of certain Public Purpose Programs and are not assets of the Debtor's estate. The Debtor shall be responsible for monitoring the USB Account. Wells Fargo shall not be deemed to be nor shall be liable to the Debtor or its estate or otherwise in violation of this Order for not monitoring the USB Account, except that nothing in this paragraph shall in any manner absolve or release Wells Fargo from any claims or liability arising as a result of Wells Fargo's gross negligence or willful misconduct with respect to the USB Account.

24. Subject to paragraph 20 above, the Debtor acknowledges its responsibility to continue with all the legislatively mandated public purpose programs (the “Public Purpose Programs”), including bringing current and remaining current on all obligations to customers, vendors and contractors who qualify for payment from funds assessed and collected for the Public Purpose Programs.

FINDINGS AND CONCLUSIONS

1. NWE furnishes electric and natural gas service for consumers in the State of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. The Commission properly exercises jurisdiction over NWE’s rates and operations. §§ 69-3-101 and 69-3-102, MCA.

2. The Commission exercises authority over public utilities and the electric and natural gas utility industry restructuring pursuant to its authority under Title 69, Chapter 8, MCA (Senate Bill 390 or “Electric Utility Industry Restructuring and Customer Choice Act,” effective May 2, 1997 and Title 69, Chapter 3, MCA (Senate Bill 396 or “NATURAL GAS ACT TITLE”).

3. The Montana Legislature has established both electric and natural gas USB programs to support certain public service purposes, including low-income energy assistance, and energy efficiency and conservation. § 69-8-402 MCA (electric USB) and § 69-3-1408 MCA (gas USB).

4. The Commission has the authority and responsibility to implement a USB charge in both electric and natural gas rates to fund the respective USB programs.

5. The Commission has approved NWE tariffs to collect such funds as Schedule Nos. E-USBC-1 (Electric Universal System Benefits Charge) and USBC-1 (Universal System Benefits Charge [gas]).

6. Pursuant to these tariffs, and with PSC direction¹, NWE acts as a conduit to collect and apply USB public purpose funds. A portion of the funds not directly applied or reimbursed through authorized credits are paid to the “universal system benefits other than low-income energy assistance fund”

¹ The electric USB program is also subject to certain filing and reporting requirements administered by the Montana Department of Revenue (“DOR”). See § 69-8-402(9)(11).

established in § 69-8-412(a). The Department of Environmental Quality is charged with administering this fund for identified public purposes. The remainder of the funds not directly applied or reimbursed through authorized credits are paid to the “universal low-income energy assistance fund” established in § 69-8-412(b). The Department of Public Health and Human Services is charged with administering this fund.

7. USB funds collected by NWE are public purpose funds and such funds are not property of NWE. NWE collects funds that are 100% the proceeds of a special charge specifically identified and mandated by the Montana Legislature, and collected by NWE for public purposes pursuant to PSC direction and approved tariffs. NWE is merely a conduit for USB funds and is intended effectively to pass through those funds by ensuring that they are expended or forwarded solely for designated programs and purposes as established by the Montana Legislature and implemented by the Commission.

8. In the handling of USB funds, NWE must track and account for all USB funds it collects. USB funds are effectively held in constructive trust for the sole benefit of USB public purpose programs and participants and beneficiaries of those programs.

9. In performing its function as a conduit for USB funds, NWE may incur obligations to qualifying customers, vendors and contractors, as well as reasonable costs of administering the program. Under these circumstances, NWE is allowed to recover such costs as allowed by statute and administrative rule, but NWE has no contingent or vested interest in USB funds, which must be expended or transferred only for their intended public purposes.

10. USB funds must be applied to their mandated purposes regardless of whether the funds are owed on account of obligations for payment, credit or reimbursement, and whether incurred prior to, during or following any proceeding in bankruptcy or reorganization. No rights or liens in USB funds by NWE, its estate or creditors are created or permitted under Montana law.

11. Segregating USB funds into an interest bearing account, separate and apart from other corporate funds, best serves to protect and enhance the legislatively-mandated USB programs.

12. As a result of the parties' agreement, the Bankruptcy Court's order, and the establishment of a separate special purpose account, the USB funds are protected from claims of NorthWestern's creditors unrelated to USB programs and the USB programs are benefiting from the collected but unspent balance.

13. USB programs will benefit from a separate special purpose account after NorthWestern emerges from bankruptcy.

ORDER

NOW THEREFOR IT IS HERBY ORDERED:

1. NorthWestern shall comply with the Bankruptcy Court's order and shall maintain a separate special purpose account for USB funds, shall deposit all USB funds into the separate special purpose account as such funds are collected, and shall authorize and make disbursements from the separate special purpose account as required by the laws and regulations of the State of Montana.

2. NorthWestern shall continue to maintain a separate special purpose account for USB funds on the same terms and conditions after it emerges from bankruptcy so long as collections for USB purposes is authorized and mandated by law or regulation.

3. This Docket D2003.8.114 is closed.

DONE AND DATED this 16th day of December, 2003 by a vote of 5 – 0.

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.